

1 DANIEL R. PRICE (73821)
2 LAW OFFICES OF DANIEL PRICE
3 260 Sheridan Avenue, Suite 450
Palo Alto, CA 94306-2099
4 Telephone: (650) 321-1440
Facsimile: (650) 321.4746

5 Floyd A. Mandell (*pro hac vice*)
6 Julie P. Setren (*pro hac vice*)
7 William J. Dorsey (*pro hac vice*)
KATTEN MUCHIN ROSENMAN LLP
8 525 West Monroe Street, Suite 1900
Chicago, IL 60661-3693
Telephone: (312) 902-5200
Facsimile: (312) 902-1061

9
10 Attorneys for Plaintiffs
11 THERMA-TRU CORP. and TT TECHNOLOGIES, INC.

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14
15 THERMA-TRU CORP. and TT
16 TECHNOLOGIES, INC.,

17 Plaintiffs,

18 vs.
19 PACIFIC MILLWORKS, and WILLIAM
ANDERS,

20 Defendants.

21 Case No. C06 07852JW

22 **CONSENT PRELIMINARY INJUNCTION**

23 WHEREAS, PLAINTIFFS and PMI have agreed that a preliminary injunction may be
24 entered against PMI without admission of liability, but to avoid the expense of resolving a
25 contested motion for preliminary injunction, which Plaintiffs have indicated that they intend to file
26 and Defendants would oppose;

27 WHEREAS, for purposes of this Consent Preliminary Injunction, the term "PLAINTIFFS"
28 shall mean and refer to, individually and collectively, the Plaintiffs Therma-Tru Corp. and TT

1 Technologies, Inc., their parents, subsidiaries, divisions, and affiliates, and their employees,
 2 officers, directors, agents, consultants, salespersons and contractors;

3 WHEREAS, for purposes of this Consent Preliminary Injunction, the term "PMI" shall
 4 mean and refer to, individually and collectively, the Defendant Pacific Millwork, Inc., its parents,
 5 subsidiaries, divisions, and affiliates, and its employees, officers, directors, agents, consultants,
 6 and contractors;

7 WHEREAS, for purposes of this Consent Preliminary Injunction, the term "ANDERS"
 8 shall mean and refer to the Defendant Bill Anders;

9 WHEREAS, for purposes of this Consent Preliminary Injunction, the term "THERMA-
 10 TRU MARKS" shall mean and refer to, individually and collectively, the following United States
 11 Trademark and Service Mark Registrations, which Plaintiffs represent and warrant are valid and
 12 subsisting and are owned by PLAINTIFFS for use in combination with the following goods and
 13 services:

US Reg. No.	Date Granted	Trademark	Goods and Services
894,422	Jul. 14, 1970	THERMA TRU and design	Metal-faced doors
1,163,406	Aug. 4, 1981	THERMA TRU	Metal-faced doors and door frames
1,178,807	Nov. 24, 1981	THERMA TRU and design	Metal-faced doors and door frames
1,186,393	Jan. 19, 1982	THERMA TRU	Metal door frames and metal-faced insulated doors with weatherstripping and/or door plants consisting of decorative molding pieces and panels attached to doors
1,186,394	Jan. 19, 1982	THERMA TRU	Metal door frames and metal-faced insulated doors containing door lights consisting of panes of glass
1,186,395	Jan. 19, 1982	THERMA TRU and design	Metal door frames and metal-faced insulated doors containing door lights consisting of panes of glass

US Reg. No.	Date Granted	Trademark	Goods and Services
1,186,396	Jan. 19, 1982	THERMA TRU and design	Metal door frames and metal-faced insulated doors with weatherstripping and/or door plants consisting of decorative molding pieces and panels attached to doors
1,526,924	Feb. 28, 1989	THERMA TRU and design	Doors in International Class 19
1,553,737	Aug. 29, 1989	THERMA TRU	Doors in International Class 19

WHEREAS, PMI represents and warrants that it does not have in its possession, custody, or control any labels, stickers, packages, signs, or other material that contain the term "Therma-Tru," or that contain any of Therma-Tru's logos, or that contain any other terms, marks, or names confusingly similar to any of the THERMA-TRU MARKS, which are counterfeit, fake, or otherwise not originating from or authorized by Therma-Tru;

WHEREAS, PLAINTIFFS have reasonably relied upon PMI's representations and warranties in the preceding paragraph in entering into this Consent Permanent Injunction;

WHEREAS, PMI reserves all rights and defenses on behalf of PMI and ANDERS regarding challenges to venue and jurisdiction in this Court for all purposes other than this Consent Preliminary Injunction;

WHEREAS, PLAINTIFFS and PMI stipulate to an extension of time for PMI and ANDERS to file an Answer to the Complaint filed in this action while a possible resolution of this action is explored, provided, however, that PMI and ANDERS must file the Answer or an appropriate motion within fourteen (14) days after receiving notice from PLAINTIFFS that PLAINTIFFS believe settlement has reached an impasse. PLAINTIFFS and PMI agree that document requests may be immediately served pursuant to Rule 34 of the Federal Rules of Civil Procedure to enable PLAINTIFFS and PMI to work toward resolution of this case;

1 WHEREAS, for purposes of this Consent Preliminary Injunction, PLAINTIFFS and PMI
2 make no admission of liability, entering into this Consent Preliminary Injunction in order to
3 provide protection to PLAINTIFFS and PMI while PLAINTIFFS and PMI explore a possible
4 resolution of this dispute;

5 WHEREAS, PLAINTIFFS and PMI and ANDERS have agreed to make best efforts to
6 pursue private mediation of this action at a mutually-agreeable date and location without regard to
7 where this action is pending.

8 And the Court finding good cause,

9 IT IS HEREBY ORDERED, ADJUDICATED, AND DECREED that:

10 1. PLAINTIFFS and PMI stipulate that, for purposes of this Consent Preliminary
11 Injunction, this Court has jurisdiction over PLAINTIFFS and PMI, and over the subject matter of
12 this action.

13 2. PMI reserves all rights and defenses on behalf of PMI and ANDERS regarding
14 challenges to venue and jurisdiction in this Court for all purposes other than this Consent
15 Preliminary Injunction.

16 3. PMI and ANDERS are granted an extension of time for PMI and ANDERS to file
17 an Answer to the Complaint filed in this action while a possible resolution of this action is
18 explored, provided, however, that PMI and ANDERS must file the Answer or an appropriate
19 motion within fourteen (14) days after receiving notice from PLAINTIFFS that PLAINTIFFS
20 believe settlement has reached an impasse. Document requests may be immediately served
21 pursuant to Rule 34 of the Federal Rules of Civil Procedure to enable PLAINTIFFS and PMI to
22 work toward resolution of this case.

1 4. PMI, including all persons in active concert or participation with PMI, are hereby
 2 preliminarily enjoined and restrained from¹:

3 (i) removing, concealing, creating, fabricating, or otherwise altering any labels,
 4 stickers, packages, signs, and all other material containing the mark "Therma-Tru," any of
 5 Therma-Tru's logos, or any other terms, marks, or names confusingly similar to any of the
 6 THERMA-TRU MARKS, except in a manner expressly authorized;

7 (ii) advertising, marketing, promoting, distributing, offering for sale, or selling
 8 any goods or services using trademarks, tradenames, or service marks comprising in whole
 9 or in part any of the THERMA-TRU MARKS or any name confusingly similar thereto,
 10 except in a manner that is expressly authorized;

11 (iii) passing off any non-Therma-Tru product as produced by, affiliated with, or
 12 sanctioned by Therma-Tru; and

13 (iv) doing any other act or thing that is likely to induce the belief, if not accurate,
 14 that goods or services sold by PMI or ANDERS are in any way affiliated or connected
 15 with, sponsored by, or related to Therma-Tru or, vice versa, that Therma-Tru's goods or
 16 services are in any way affiliated or connected with, sponsored by, or related to PMI, or
 17 that is likely to diminish the distinctiveness of the THERMA-TRU MARKS.

18 5. No representation, agreement, or provision of this Consent Preliminary Injunction
 19 shall be taken as an admission by PLAINTIFFS or PMI as to any issue of law or fact related to the
 20 underlying dispute in the matter at bar. This Consent Preliminary Injunction shall not be effective
 21 to establish, in whole or in part, that PLAINTIFFS are the prevailing party in this case. Each party
 22 will bear its own attorney fees and costs incurred in the preparation and filing of this Consent
 23

24
 25
 26
 27 1 PLAINTIFFS reserve all rights to seek damages for any such violations and to seek a
 28 broader permanent injunction at trial. PMI and ANDERS reserve all rights to any and all defenses
 it may have.

1 Preliminary Injunction. This Consent Preliminary Injunction shall be inadmissible in any
2 proceeding, except in a proceeding to enforce it or to terminate it.

3 6. Upon entry, this Consent Preliminary Injunction Order shall remain in full force
4 and effect until this case is resolved by dismissal, verdict, judgment, or settlement, unless
5 otherwise ordered by this Court. Violation of this Order by PMI shall entitle PLAINTIFFS to all
6 damages and remedies, as this Court deems just and equitable.
7

8 7. In the event either Plaintiffs or PMI file a Motion to Enforce this Order, the
9 prevailing party shall be entitled to an award of their attorneys' fees and costs, together with such
10 additional damages and remedies as this Court deems just and equitable.
11

12 IT IS SO ORDERED this 11 day of ^{April} ~~February~~, 2007.
13

14
15 Dated: 4/11/2007

16 _____
17 Honorable James Ware
18 United States Judge
19 United States District Court
20 Northern District of California
21
22
23
24
25
26
27
28

[SIGNATURE PAGES OF PARTIES FOLLOW]

1 **PLAINTIFFS:**

2 **THERMA-TRU CORP. AND TT TECHNOLOGIES, INC.**

3 By: _____ /s/

4 Name: _____ Lauren S. Tashman

5 Title: _____ Asst. Secretary

6 Date: _____ 02/01/07

7 **DEFENDANT:**

8 **PACIFIC MILLWORK, INC.**

9 By: _____ /s/

10 Name: _____ Bill Anders, Jr.

11 Title: _____ President

12 Date: _____ 02/01/07

13 *Filer's Attestation: Pursuant to General Order
14 No. 45, Section X(B) regarding signatures,
15 Daniel R. Price hereby attests that concurrence
16 in the filing of the document has been obtained.*